FILED
FEB 5 1993
OFFICE OF THE CLERK

No. 92-800

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION,
Petitioner,

v.

KATHLEEN E. LES; FRANCES LES THOMAS;
MANUEL JESUS PEREZ MORALES; DAVID R. PEREZ;
MANUEL R. PEREZ,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENT TO PETITIONER'S REPLY

LAWRENCE S. EBNER*
KENNETH W. WEINSTEIN

McKENNA & CUNEO
1575 Eye Street, N.W.
Washington, D.C. 20005
(202) 789-7500

Attorneys for Petitioner

**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

SUPPLEMENT TO PETITIONER'S REPLY

Pursuant to Rule 15.7, Petitioner wishes to call the Court's attention to the following statement published by Federal Respondents subsequent to the filing of the Solicitor General's brief in opposition:

> The petitioners challenged EPA's February 25, 1991 Final Order in the U.S. Court of Appeals, Ninth Circuit. On July 8, 1992, in *Les v. Reilly*, 968 F.2d 985 (9th Cir.), the court overturned EPA's interpretation that the Delaney clause contains an exception for pesticide uses that present no more than a *de minimis* cancer risk. The court ruled that food additive regulations are barred for any pesticides that are animal or human carcinogens. Although the court's ruling immediately affects only the pesticides involved in the petition, *under the court's interpretation of the Delaney clause, food additive regulations will have to be revoked or denied for dozens of pesticide uses that either have or need such regulations.*
>
> *EPA disagrees with the Ninth Circuit's decision and continues to believe that a de minimis exception is appropriate both as a legal matter and as a matter of public policy. EPA asked the Department of Justice (DOJ) to petition the Supreme Court for a writ of certiorari on behalf of EPA.* The Solicitor General in DOJ makes decisions concerning whether cases involving Federal agencies will be appealed to the Supreme Court. The Solicitor General ultimately decided against

> petitioning the Supreme Court to review this case. The Solicitor General concluded that this case was not one of the small number of Federal cases, from among many presented each year for possible Supreme Court action, that merited a petition for certiorari.
>
> The National Agricultural Chemicals Association (NACA), which intervened in the case supporting EPA's position, has filed a petition with the Supreme Court for a writ of certiorari asking the Supreme Court to overturn the Circuit Court's decision. For the moment, the effect of the Ninth Circuit's decision has been stayed by the filing of NACA's petition with the Supreme Court. EPA does not know when the Supreme Court will rule on NACA's petition. *If the Supreme Court does not agree to hear NACA's petition, or upholds the Ninth Circuit's decision, EPA will be required to revoke the tolerances that were the subject of the California petition. EPA is prepared to act promptly after any adverse Supreme Court action.*

58 Fed. Reg. 7470, 7472 (1993) (emphasis added).[1]

On February 2, 1993, EPA Administrator Browner released lists identifying 35 major agricultural pesticides which may be affected by the Ninth Circuit's ruling. Ms. Browner stated:

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[1] The *Federal Register* notice was signed by former EPA Administrator William K. Reilly on January 19, 1993. On January 29, 1993, it was approved for publication by EPA's new Administrator, Carol M. Browner.

> *EPA does not believe that the pesticides in [these] lists pose an unreasonable risk to public health*, based on available data. . . . Thus, the current debate is *not about health risks*, but about the *legal interpretation of the statute*. However, the Agency does believe that the *impact of the Ninth Circuit Court's decision upon pesticide users and food processors could be substantial.*

Carol M. Browner, Note to Correspondents (Feb. 2, 1993) (emphasis added).

Respectfully submitted,

LAWRENCE S. EBNER*
KENNETH W. WEINSTEIN

MCKENNA & CUNEO
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Washington, D.C. 20005
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Attorneys for Petitioner

**Counsel of Record*